

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 ASPIC ENGINEERING AND
6 CONSTRUCTION COMPANY,

7 Plaintiff,

8 v.

9 ECC CENTCOM CONSTRUCTORS, LLC
10 AND ECC INTERNATIONAL, LLC,

11 Defendants.

Case No. 17-cv-0224-YGR

**ORDER GRANTING MOTION TO REQUIRE
PLAINTIFF TO ORDER TRANSCRIPT**

12 By way of background, on July 18, 2017, the Court granted defendants' motion to vacate final
13 arbitration award and denied plaintiff's motion to confirm and correct the arbitration award. (Dkt. No.
14 42.) Plaintiff filed a timely notice of appeal on July 26, 2017. (Dkt. No. 46.) Now before the Court is
15 defendants' motion to require plaintiff to order and pay for the transcript of this Court's July 11, 2017
16 hearing on those respective motions which defendants designated on appeal. (Dkt. No. 50.) Having
17 carefully considered the pleadings and the papers submitted on this motion, and for the reasons set
18 forth below, defendants' motion is **GRANTED**.

19 Fed. R. App. P. 10(a) provides that the "record on appeal" is comprised of "(1) the original
20 papers and exhibits filed in the district court; (2) *the transcript of proceedings, if any*; and (3) a
21 certified copy of the docket entries prepared by the district clerk." (Emphasis supplied.) An appellant
22 must "order from the reporter a transcript of such parts of the proceedings not already on file as the
23 appellant considers necessary." Fed. R. App. P. 10(b)(1). Fed. R. App. P. 10(b)(3) provides, in
24 relevant part, that:

25 unless the entire transcript is ordered . . . (B) if the appellee considers it necessary
26 to have a transcript of other parts of the proceedings, the appellee must, within 14
27 days after the service of the order or certificate and the statement of the issues, file
28 and serve on the appellant a designation of additional parts to be ordered; and (C)
unless within 14 days after service of that designation the appellant has ordered

1 all such parts, and has so notified the appellee, the appellee may within the
2 following 14 days either order the parts or move in the district court for an order
3 requiring the appellant to do so. . . .


4 Fed. R. App. P. 10(b)(3). Similarly, under the Ninth Circuit Local Rules, an appellant is
5 required to “order all portions of the transcript listed by both appellant and appellee.” Cir.
6 R. 10-3(d). An appellant must also “make arrangements with the court reporter to pay for
7 these additional portions unless appellant certifies that they are unnecessary to the appeal
8 and explains why not.” Cir. R. 10-3(f).

9 Here, defendant/appellees timely designed the transcript of this Court’s proceedings as part of
10 the record on appeal. (*See* Dkt. No. 49.) Plaintiff/appellant was thus required to order a transcript of
11 the same by September 25, 2017. *See* Fed. R. App. P. 10(b)(3); Cir. R. 10-3(d), (f). Plaintiff/appellant
12 argues that “Federal Rule of Appellate Procedure Rule 10(b)(3)(B) requires that Defendant-Appellee
13 make some showing of where Defendant-Appellee would use the requested transcript in a *de novo*
14 hearing.” (Dkt. No. 52 at 1.) Plaintiff/appellant does not persuade, as Rule 10(b)(3)(B) states no such
15 requirement and plaintiff has cited no authority which indicates otherwise. Similarly, plaintiff/
16 appellant’s representation that the transcript is unnecessary because “no witnesses were sworn or
17 testified, [and] the transcript consists solely of counsel’s argument and the appeal is heard *de novo*”
18 fails in light of the fact that during the hearing the parties made admissions regarding the applicability
19 of California or federal law and the content of the parties’ contracts. Therefore, the Court **GRANTS**
20 defendant/appellee’s motion and **ORDERS** plaintiff/appellant to order and pay for the transcript of this
21 Court’s July 11, 2017, motions hearing no later than **October 3, 2017**. After appeal, the Ninth
22 Circuit itself will determine the issues of costs.

23 This terminates Dkt. No. 50.

24 **IT IS SO ORDERED.**

25
26 Dated: September 28, 2017

27 
28 YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE